

ST 01-0143-GIL 07/30/2001 SERVICE OCCUPATION TAX

A veterinarian is engaged in a service occupation subject to the Service Occupation Tax. The Service Occupation Tax is a tax imposed upon tangible personal property transferred as an incident of the sale of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

July 30, 2001

Dear Xxxxx:

This letter is in response to your letter dated June 8, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This letter is to request for assistance in obtaining written documentation that addresses how the State of Illinois' sales and use laws and regulations apply to a veterinarian's purchases and subsequent sale of inventory.

Based on my review of the State's sales and use tax laws, I could not locate where in the laws & regulations the inventory categories identified below were directly addressed. I would greatly appreciate any written documentation or references you could provide me in order to address the questions below.

1. How do the sales and use tax laws and regulations apply to a veterinarian's purchases (from the wholesaler) and subsequent sale (to the customer) of the following inventory categories?
 - General hospital and laboratory supplies (cotton balls, bandages, tape, gloves, surgical supplies, disinfectants, etc.)
 - Laboratory equipment
 - Medicines with the Federal Legend Label (Prescription medicines) 'Caution: Federal law prohibits dispensing without a prescription' consumed by the veterinarian within their practice.
 - Medicines with the Federal Legend Label (Prescription medicines) resold by the veterinarian to their customers.
 - Medicines with only the Veterinary Label 'Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.'
 - Other non-prescription medicine, topical shampoos and ointments (assuming not for resale).

- Syringes and needles
 - Diagnostic test kits and slides (used to analyze blood, urine, etc.)
 - Vaccines (administered by injection, orally, and absorption through the eye).
 - X-ray film and related supplies
 - Nutraceuticals and supplements (primarily vitamins and assuming not for resale).
 - Clothing (particularly scrub outfits used in vet clinics).
2. Are there any specific exemptions for veterinarians that fall into the following categories?
- Practice limited to large animals; equine and/or livestock.
 - Mixed practice; veterinarian treats both large animal and pets.
 - Animal Groomers

In addition to the categories listed under questions 1 and 2, could you possibly address vaccines directly? Note vaccines do not carry the Federal Legend Label (Prescription medicines) 'Caution: Federal law prohibits dispensing without a prescription.' Instead the label on vaccine packages states: 'Caution: In the absence of a veterinarian-client-patient relationship, Federal law prohibits the re-labeling, repackaging, resale, or redistribution of the individual contents of this package.'

Thank you for your cooperation.

A veterinarian is engaged in a service occupation subject to the Service Occupation Tax. The Service Occupation Tax is a tax imposed upon tangible personal property transferred as an incident of the sale of service. See 86 Ill. Adm. Code 140.101, enclosed. If a veterinarian transfers tangible personal property to a patient as a result of the practice of veterinary medicine, the veterinarian will be subject to Service Occupation Tax for that type of transfer, rather than Retailers' Occupation Tax.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item

transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

If a veterinarian sells tangible personal property which is available through pet stores or other retail stores, those sales will be subject to Retailers' Occupation Tax liability even though the product may be prescribed by the veterinarian. For example, certain types of pet foods and flea powders sold by veterinarians with a prescription are available through pet stores without a prescription. The sale of such products to a customer will result in Retailers' Occupation Tax liability for the veterinarian. Tax should be charged on the gross receipts from the sale. Please note that if a veterinarian sells items over the counter, he will incur Service Occupation Tax and be limited to calculation methods one through three above on his sales of service. Method 4, the unregistered de minimis option, is not available to servicemen who are otherwise required to be registered with the Department as retailers.

Under the Farm Chemicals exemption, an exemption exists for any chemical product used in production agriculture, the products of which are to be sold, or in the production of care of animals that are to be sold or the products of which are to be sold. See the enclosed copy of 86 Ill. Adm. Code 130.1955. Further, please note that veterinarians owe Use Tax when they purchase items, such as instruments, syringes and needles, and other equipment, including, but not limited to scrubs,

x-ray film, and gloves, that are not transferred subject to their sale of service and that they use when performing their service.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.